

## NO MONETARY CONSIDERATION

### EASEMENT AGREEMENT

**THIS EASEMENT AGREEMENT** (this "Agreement"), is made this 25th day of February, 2021, by and between **THE BOARD OF EDUCATION OF MONTGOMERY COUNTY**, a body corporate and politic of the State of Maryland (the "Board"), and **THE CITY OF GAITHERSBURG**, a municipal corporation of the State of Maryland (the "City"), each individually referenced herein as the "Party", and, collectively as the "Parties".

#### **RECITALS:**

A. The Board is the owner of certain real property located in Montgomery County, Maryland and designated as "Lot 2" on a plat of subdivision entitled "Plat of Resubdivision, Lot 2 and Parcel A, Victory Farm (Liber 5496, Folio 202, Liber 5910, Folio 821, and Liber 6105, Folio 849, Plat Book No. 109, Plat No. 12762), Election District No. 9, City of Gaithersburg, Maryland, Situated Along the South Side of Victory Farm Drive, Approximately 350 Feet East of its Intersection with Girard Street, More Specifically at 400 Victory Farm Drive, in the City of Gaithersburg, Montgomery County, Maryland" recorded among the Land Records of Montgomery County, Maryland as Plat No. 25716 (the "Record Plat") (the "Board Property"). A copy of the Record Plat, as so recorded, is attached to and made a part of this Agreement as Exhibit "A".

B. The City is the owner of certain real property located adjacent to the Board Property in Montgomery County, and designated as "Parcel A (Consolidated Remaining Lands)" on the Record Plat (the "City Property"). The City Property is commonly known as Kelley Park.

C. The Plat established certain non-exclusive public access easements as shown on the Plat.

D. The Parties now desire to set forth the terms and conditions of these public access easements.

E. The Board Property and the City Property shall sometimes hereinafter be referred to individually as a "Parcel" and collectively as the "Parcels".

**NOW, THEREFORE**, in consideration of the above recitals, each of which is hereby made a part of this Agreement, and for other good and valuable consideration, the adequacy, sufficiency and receipt of which is hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Public Access Easement for Pedestrian and Vehicular Access Across Public Access Easement No. 1.

(a) The terms of Public Access Easement No. 1 are as follows: members of the public and the City and its agents, employees, licensees and invitees shall have the right to go on, over and across that portion of the Board Property depicted on the Record Plat as "Public Access Easement

No. 1” (“Access Easement No. 1”), for the purpose of pedestrian and vehicular ingress and egress to and from the City Property and the public right of way known as Victory Farm Drive.

(b) The Board hereby covenants and agrees that it shall never erect or permit to be erected any fence, barrier, building or other structure in Access Easement No. 1 in a manner that would interfere with the pedestrian and vehicular ingress and egress described above, unless the Board obtains the City’s prior written consent.

(c) The easement rights granted under this Section 1 are not intended to and do not include, grant or permit an easement for parking on the Board Property, except that members of the public shall have the right to park passenger vehicles in the five (5) parking spaces located in Public Access Easement No. 1 and designated as parking for the “tot lot” to be located on the City Property.

2. Public Access Easement for Trails.

(a) The terms of Public Access Easement No. 2, Public Access Easement No. 3 Public Access Easement No. 4 are as follows: members of the public and the City and its respective agents, employees, licensees and invitees shall have the right to go on, over and across those portions of the Board Property depicted on the Record Plat as “Public Access Easement No. 2”, “Public Access Easement No. 3”, and “Public Access Easement No. 4” (collectively, the “Trail Easement Areas”), for the purpose of pedestrian access on, over and across the sidewalk(s) and/or walking trail(s) located thereon.

(b) The Board hereby covenants and agrees that it shall never erect or permit to be erected any fence, barrier, building or other structure in the Trail Easement Areas in a manner that would interfere with the pedestrian access described above, unless the Board obtains the City’s prior written consent.

4. Maintenance.

(a) The Board shall maintain and keep in a good state of repair Access Easement No. 1. This maintenance obligation shall include keeping such area reasonably free of ice, snow, debris and surface water in accordance with the Board’s customary maintenance and snow removal standards for public school properties.

(b) The City shall maintain and keep in a good state of repair the Trail Easement Areas, including, without limitation, repairing all sidewalks and asphalt trails and litter removal.

5. Indemnity.

(a) The City hereby agrees to defend any litigation and to indemnify and hold the Board harmless from any losses, damages or expenses, including court costs and reasonable attorneys’ fees, suffered by the Board as a result of the use by the City, its agents, employees, contractors, licensees or invitees and members of the public, of the easements or of any of the associated rights granted to the City and the public herein. Indemnification given by the City in this Agreement is subject to the notice requirements and damage limitations set forth in the Local



Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. Sec. 5-301, et seq. (the "LGTC") and Md. Code Ann., Cts. & Jud. Proc. Sec. 5-5A-02, all as amended from time to time, and is in no way intended to create any rights or causes of action in any third parties, or to increase the City's liability over any of the caps provided in the above cited statutes, as applicable

(b) The City is self-insured through the Local Government Insurance Trust and will upon request provide the Board with a Certificate providing evidence of sufficient liability coverage, which will remain in full force and effect during this Agreement, to cover all bodily injury, death, and property damage arising from the use and enjoyment of the easements created herein by the City and its agents, employees, licensees and invitees hereunder.

6. Reasonable Use and Enjoyment. The City shall use the rights and easements declared and granted pursuant to this Agreement in a reasonable manner so as not unreasonably to interfere with the normal operation, use and enjoyment of the Board Property and the easements and rights created hereunder.

7. Duration of Obligations. The obligations of any party under this Agreement shall apply only with respect to the period during which the party is the owner of a fee simple interest in the parcel of land and improvements, namely the Board Property and the City Property, as the case may be, with respect to which the obligations apply. When the party ceases to own a fee simple interest therein, the obligations thereafter accruing (but not accrued and unperformed obligations) shall be the obligations of its successor in ownership and interest.

8. Enforcement; Time of the Essence.

(a) This Agreement may be enforced by the parties hereto and the holders of any first mortgages (or deeds of trust) encumbering any of the Parcels; provided, however, that no suit, action or other proceeding to enforce or attempt to enforce the provisions of this Agreement may be brought or notices with respect thereto sent by any tenant of any of the Parcels other than any present or future tenant of the Parcels to whom the right of enforcement or the right to send notices has been specifically assigned in writing by one of the parties hereto, nor shall the consent of any such tenant other than any present or future tenant of any of the Parcels to whom the right of enforcement or the right to send notices has been specifically assigned in writing by one of the parties hereto, be required for any amendment or termination of this Agreement.

(b) If any party institutes any action or proceeding against any other party relating to the provisions of this Agreement, or any default hereunder, the unsuccessful party in such action or proceeding will reimburse the successful party therein for the reasonable expenses of attorneys' fees and disbursements incurred by the successful party.

(c) Time shall be of the essence with respect to each and every provision of this Agreement.

9. Warranty of Authority. Each of the parties hereto hereby warrants and covenants to the other party that it (i) has full right, power and authority to enter into, carry out and perform this

Agreement without obtaining any further approvals or consents, and (ii) owns the entire fee simple title, legal and equitable, to its respective Parcel.

10. Waivers and Consents. Modifications, waivers and consents respecting this Agreement shall only be binding if in writing and signed by the party against whom such modification, waiver or consent is sought to be enforced.

11. Notices. All notices and other communications under this Agreement shall be in writing and be deemed duly given if personally delivered, sent by overnight delivery service, or mailed by certified mail, return receipt requested, postage prepaid, as follows:

If to the Board:

Board of Education of Montgomery County  
45 W. Gude Drive, Suite 4300  
Rockville, Maryland 20850  
Attn: Department of Facilities Management

With copies to:

Board of Education of Montgomery County  
850 Hungerford Drive, Room 156  
Rockville, Maryland 20850  
Attn: Office of the General Counsel

and

Miles & Stockbridge  
1201 Pennsylvania Avenue, NW, Suite 900  
Washington, DC 20004  
Attention: William W. Riggins, III, Esq.

If to the City:

City of Gaithersburg Department of Parks, Recreation and Culture  
506 South Frederick Avenue  
Gaithersburg, Maryland 20877  
Attn: [Carolyn Muller, Director]

With a copy to:

City of Gaithersburg  
31 South Summit Avenue

Gaithersburg, Maryland 20877  
Attn: City Manager

and

City of Gaithersburg  
31 South Summit Avenue  
Gaithersburg, Maryland 20877  
Attn: Office of the City Attorney

12. Construction. This Agreement shall be given a reasonable construction so that the intention of the parties to confer a commercially useable right of enjoyment is carried out.

13. Severability; Governing Law. The provisions of this Agreement are severable and the invalidity of one or more of the provisions shall not affect the validity or enforceability of any other provisions. This Agreement shall be governed by and construed and enforced according to the laws of the State of Maryland.

14. Compliance with Laws. The Parties shall comply with all applicable federal, state, and local laws and regulations, as well as all applicable safety requirements, Board of Education policies, and MCPS regulations issued by the Superintendent of Schools ("Laws"). Board of Education policies and MCPS regulations are available at this link: [www.montgomeryschoolsmd.org/departments/policy/](http://www.montgomeryschoolsmd.org/departments/policy/). This obligation includes but is not limited to: (i) all applicable Laws regarding non-discrimination, as well as Board Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency* ("Board Policy ACA"), which prohibits discrimination based on actual or perceived personal characteristics, including race, ethnicity, color, ancestry, national origin, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family/parental status, marital status, age, physical or mental disability, poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations; (ii) all applicable Laws regarding ethics and conflict of interest, including Board of Education Policy BBB, *Ethics*; and (iii) all applicable Laws regarding the safety and security of students, including the following Maryland statutes: (a) Section 11-722 of the Criminal Procedures Article, Annotated Code of Maryland, which prohibits an entity that enters into a contract with a county board of education from knowingly employing a registered sex offender to work on school property; (b) Section 6-113 of the Education Article, Annotated Code of Maryland, which prohibits any entity that is a contractor or subcontractor for a local school system to knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving specific sexual offenses, child sexual abuse, and crimes of violence; and (c) Section 5-551 of the Family Law Article, Annotated Code of Maryland which requires any entity that is a contractor or subcontractor for a local school system to ensure that any individuals in its work-force undergo a criminal background check, including



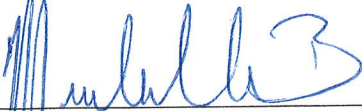
fingerprinting, if the individuals will work in a school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children.

15. Miscellaneous. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and neither party is liable to the other or bound in any manner by expressed or implied warranties, guaranties, promises, statements or representations pertaining to the property that is the subject matter hereof unless such warranties, guaranties, promises, statements or representations are expressly and specifically set forth herein. Titles or captions to paragraphs are for convenience only and shall be given no legal effect or significance. Nothing in this Agreement shall be deemed to constitute the Board and the City partners or joint ventures. This Agreement may be executed simultaneously in any manner of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. The terms, conditions, and provisions of this Agreement shall be deemed covenants running with the land, except as otherwise hereinabove specifically set forth, shall be binding upon and inure to the benefit of the Board and the City and duly authorized licensees or invitees of any of the foregoing (provided that all such licensees and invitees shall have no greater rights than are specifically granted herein). Each party hereby specially warrants the easements and rights created hereunder and agrees to execute such further assurances thereof as may be requisite and further agree that if any applicable governmental agency or authority requires the execution of any customary instruments in connection with the easements and rights granted hereunder, then upon request, the Board or the City, as the case may be, shall consent to the execution of any such instruments, and to the extent required, shall execute such confirmatory or supplemental instruments as may be required in connection therewith.

**[Remainder of page left intentionally blank. Signatures appear on following page.]**

IN WITNESS WHEREOF, the Parties have executed this Agreement by causing the same to be signed as of the day and year first written above.

ATTEST:



WITNESS:

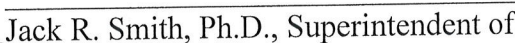
CITY OF GAITHERSBURG:

  
\_\_\_\_\_  
Tanisha Briley, City Manager

ATTEST:

THE BOARD OF EDUCATION OF  
MONTGOMERY COUNTY, MARYLAND

WITNESS

  
\_\_\_\_\_  
Jack R. Smith, Ph.D., Superintendent of  
Schools

IN WITNESS WHEREOF, the Parties have executed this Agreement by causing the same to be signed as of the day and year first written above.

ATTEST:

CITY OF GAITHERSBURG:

WITNESS:

Tanisha Briley, City Manager

ATTEST:

THE BOARD OF EDUCATION OF  
MONTGOMERY COUNTY, MARYLAND

Marianne M. Hamuski  
WITNESS

Jack R. Smith  
Jack R. Smith, Ph.D., Superintendent of  
Schools



STATE OF MARYLAND

COUNTY OF MONTGOMERY

I hereby certify that, before me, the subscriber, a NOTARY PUBLIC of the STATE OF MARYLAND, in and for Montgomery County, personally appeared Tanisha Briley, City Manager for the City of Gaithersburg, known to me (or satisfactorily proven) to be the person whose name appears herein and acknowledged the foregoing Agreement to be his/her act.

WITNESS MY HAND AND NOTARIAL SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(Seal)  
Notary Public

My Commission Expires:

\* \* \*

STATE OF MARYLAND

COUNTY OF MONTGOMERY

I hereby certify that, before me, the subscriber, a NOTARY PUBLIC of the STATE OF MARYLAND, in and for Montgomery County, personally appeared Jack R. Smith, Ph.D., Superintendent of Schools, known to me (or satisfactorily proven) to be the person whose name appears herein and acknowledged the foregoing Agreement to be his/her act on behalf of The Board of Education of Montgomery County, Maryland.

WITNESS MY HAND AND NOTARIAL SEAL this 25<sup>th</sup> day of FEBRUARY, 2021.

Bandra L. Papich  
(Seal)  
Notary Public

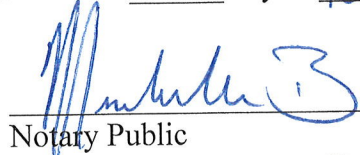
My Commission Expires: 10.1.2023

STATE OF MARYLAND

COUNTY OF MONTGOMERY

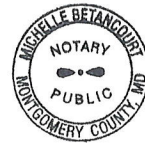
I hereby certify that, before me, the subscriber, a NOTARY PUBLIC of the STATE OF MARYLAND, in and for Montgomery County, personally appeared Tanisha Briley, City Manager for the City of Gaithersburg, known to me (or satisfactorily proven) to be the person whose name appears herein and acknowledged the foregoing Agreement to be his/her act.

WITNESS MY HAND AND NOTARIAL SEAL this 8<sup>th</sup> day of February, 2021.

 (Seal)  
Notary Public

My Commission Expires: 1/23/24

\* \* \*



Michelle Betancourt  
NOTARY PUBLIC  
Montgomery County  
State of Maryland  
My Commission Expires  
January 23, 2024

STATE OF MARYLAND

COUNTY OF MONTGOMERY

I hereby certify that, before me, the subscriber, a NOTARY PUBLIC of the STATE OF MARYLAND, in and for Montgomery County, personally appeared Jack R. Smith, Ph.D., Superintendent of Schools, known to me (or satisfactorily proven) to be the person whose name appears herein and acknowledged the foregoing Agreement to be his/her act on behalf of The Board of Education of Montgomery County, Maryland.

WITNESS MY HAND AND NOTARIAL SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(Seal)  
Notary Public

My Commission Expires: